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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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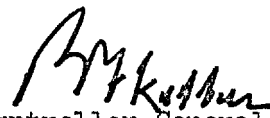
September 15, 1971

*GAO Referral Not
Required*

Dear Mr. Helms:

Enclosed, for your information, is our decision of today to the Chairman, United States Civil Service Commission, holding that in our opinion section 252(c) of the Central Intelligence Agency Retirement Act, as amended by section 5 of Public Law 91-626, may be interpreted as authorizing the transfer--from the Civil Service Commission Retirement and Disability Fund to the Central Intelligence Agency Retirement and Disability Fund--of contributions made by the Government into the CSC Fund on behalf of employees who transferred to CIA prior to December 31, 1970, the date of Public Law 91-626.

Sincerely yours,


Acting Comptroller General
of the United States

Enclosure

The Honorable Richard Helms, Director
Central Intelligence Agency

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SEP 15 1971

Dear Mr. Hampton:

Reference is made to your letter of May 15, 1971, requesting our decision as to the possible retroactive application of section 252(c) of the Central Intelligence Agency (CIA) Retirement Act of 1964, Pub. L. 88-643, 78 Stat. 1044, 1951 (50 U.S.C. 403 note), as amended by Public Law 91-626, enacted December 31, 1970, 84 Stat. 1872. The specific question to be resolved is whether section 252(c), as amended, authorizes the United States Civil Service Commission (CSC) to transfer from the CS Retirement and Disability Fund to the CIA Retirement and Disability Fund monies representing contributions made by the Government on behalf of employees who transferred to the CIA retirement system prior to December 31, 1970, the date of the amendment. The same question is put regarding the converse situation, i.e., with respect to Government contributions on behalf of CIA employees who have transferred to the CS retirement system prior to the enactment of Public Law 91-626.

The question arises in connection with a difference of opinion between the CSC and the CIA concerning the retroactive applicability of the amendment. The CIA maintains that the act and its legislative history indicate that the Congress intended the amendment to be applied retrospectively. Such an interpretation would result in CSC having to transfer some \$33,000,000, from its Retirement and Disability Fund to the CIA Retirement and Disability Fund, that sum representing Government contributions to the CS Fund on behalf of employees who transferred into the CIA retirement system prior to the effective date of the amendment. The CSC takes the position that the act and its legislative history do not clearly authorize retroactive application and the resultant transfer to the CIA Fund of such sums as described above.

Section 252(c) provides, in pertinent part, as follows:

"(c)(1) If an officer or employee under some other Government retirement system becomes a participant in the system by direct transfer, the Government's contributions (including interest accrued thereon computed at the rate of 3 per centum a year compounded annually) under such retirement system on behalf of the officer or employee shall be transferred to the fund and such officer or employee's total contributions and deposits (including

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interest accrued thereon), except voluntary contributions, shall be transferred to his credit in the fund effective as of the date such officer or employee becomes a participant in the system. Each such officer or employee shall be deemed to consent to the transfer of such funds and such transfer shall be a complete discharge and acquittance of all claims and demands against the other Government retirement fund on account of service rendered prior to becoming a participant in the system.

"(c)(2) If a participant in the system becomes an employee under another Government retirement system by direct transfer to employment covered by such system, the Government's contributions (including interest accrued thereon computed at the rate of 3 per centum a year compounded annually) to the fund on his behalf shall be transferred to the fund of the other system and his total contributions and deposits, including interest accrued thereon, except voluntary contributions, shall be transferred to his credit in the fund of such other retirement system effective as of the date he becomes eligible to participate in such other retirement system. Each such officer or employee shall be deemed to consent to the transfer of such funds and such transfer shall be a complete discharge and acquittance of all claims and demands against the fund on account of service rendered prior to his becoming eligible for participation in such other system."

The legislative history of the 1970 amendment of 252(c) indicates that the Congress intended the amendment to correct the inequities of the situation which existed prior to the date of the amendment. At that time employees transferring between the two retirement systems were not followed by the Government contributions to the retirement funds on their behalf which had been made prior to the date of transfer, although employee contributions were transferred with the employees.

This had resulted in an inequitable situation in that the approximately \$33,000,000 contributed by the Government on behalf of the employee who transferred to the CIA System prior to the date of the amendment could not be credited to the CIA Retirement Fund, which presently covers such employees and which will be the fund which will finance the annuities and other benefits payments to be made upon the retirement of these employees.

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The House and Senate Reports accompanying S. 4571, the bill which later became Public Law 91-626, in referring to the amendment of 252(c), state as follows:

"Under existing law, an individual who transfers into the CIA retirement fund from some other Government retirement system can transfer his contributions from the other fund to the CIA fund, but there is no provision for transfer of the Government contribution to such fund.

"Also, when an individual transfers from the CIA retirement fund to some other Government retirement fund, there is no provision for the transfer of either the Government's contribution or his own contribution to the non-CIA retirement fund. This section would correct the inequities of this situation.

"The Civil Service Commission is wholly in accord with this change." H. Rept. 91-1771, pp 3-4; S. Rept. 91-1419, pp 3-4. (Emphasis added.)

In addition, and although not controlling, we note that the acting Chairman of the House Armed Services Committee, which held hearings on the bill, stated--subsequent to the passage of the bill by the Congress--that it was intended by the Congress to have a retroactive effect, and that all past Government contributions on behalf of former CSC employees who transferred to the CIA system prior to the effective date of the amendment were to be transferred to the CIA Retirement Fund. His statement as it appears at page H12614 Cong. Rec., December 31, 1970 (Temp. Ed.), is, in part, as follows:

"* * * included in the legislation was a provision which authorized the Civil Service Commission to transfer to the CIA retirement fund all Government contributions previously accumulated in the Civil Service retirement fund when employees of the Civil Service transferred into the Agency's retirement system.

"The purpose of this authorization was to insure the actuarial soundness of the CIA retirement fund. Testimony developed by the Committee indicated that

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execution of this authority would result in the transfer of approximately \$33 million from the civil service retirement fund to the CIA retirement fund. This sum would have represented past Government contributions for all Agency employees transferred to the CIA retirement system since 1964."

While the matter is not entirely free from doubt, it is difficult to see how the inequities referred to above respecting the future integrity of the CIA Retirement and Disability Fund will be adequately corrected unless the 1970 amendment to the 1964 CIA Retirement and Disability Act is given a retroactive effect.

Accordingly, it is our opinion that section 252(e) of the CIA Retirement Act, as amended by section 5 of Public Law 91-626 authorizes the CSC to transfer from the Civil Service Retirement and Disability Fund to the Central Intelligence Agency Retirement and Disability Fund such monies as represent all Government contributions made into the CSC Retirement and Disability Fund on behalf of employees who transferred to the CIA Retirement System prior to December 31, 1970, the date of Public Law 91-626.

We understand from the CIA that there are no deferred annuities under the CIA plan the right to which would be abrogated by retroactive application of the 1970 amendments. It is also our view that section 252(e), as amended, authorizes a like transfer from the CIA Retirement and Disability Fund to the CS Retirement and Disability Fund for employees who have moved from positions in which they were covered under the CIA Retirement Act to positions in which they are covered under the CS Retirement Act.

Sincerely yours,

R.F.KELLER

Acting Comptroller General
of the United States

The Honorable Robert E. Hampton, Chairman
United States Civil Service Commission

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